

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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THE TRUSTEES OF THE MOSAIC AND TERRAZZO  
WELFARE FUND, MOSAIC AND TERRAZZO  
PENSION FUND AND MOSAIC AND TERRAZZO  
ANNUITY FUND,

Plaintiffs,

-against-

REPORT AND  
RECOMMENDATION

CV 07-1354 (ADS) (ETB)

THOROBRED FLOORING, INC.,

Defendant.

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TO THE HONORABLE ARTHUR D. SPATT, United States District Judge:

Plaintiffs commenced the within action on April 2, 2007, pursuant to the Employee Retirement Income Security Act, as amended, 29 U.S.C. §§ 1132(a)(3), 1145 (“ERISA”) and the Labor-Management Relations Act of 1947, 29 U.S.C. § 1985. The parties agreed to settle the action in September 2008 for \$42,000, pursuant to which the defendant would make regular installment payments to the plaintiffs. After paying \$33,000 of the money owed, defendant ceased making any payments in October 2009. Plaintiffs thereafter applied to the Court for entry of a judgment for the remaining \$9,000 due and owing under the Settlement Agreement, plus interest, statutory damages and attorney’s fees, as provided for under the Settlement Agreement in the case of default by the defendant.

By Order dated May 14, 2010, Judge Spatt entered judgment in favor of the plaintiffs for \$9,000. The matter was referred to the undersigned to report and recommend with respect to the

amount of interest, statutory damages and attorney's fees to be awarded to plaintiffs. An inquest on damages was thereafter scheduled for July 22, 2010.

By a joint letter dated July 14, 2010, counsel for both plaintiffs and the defendant advised the undersigned that the defendant has consented to entry of a judgment in plaintiffs' favor in the amount of \$18,437.46, which represents the full amount of interest, statutory damages and attorney's fees sought by plaintiffs. The parties request that the Court enter the judgment sought, rendering the inquest on damages unnecessary.

Accordingly, I recommend that the Court enter judgment in favor of the plaintiffs in the amount of \$18,437.46.

#### OBJECTIONS TO THIS REPORT AND RECOMMENDATION

Any written objections to this Report and Recommendation must be filed with the Clerk of the Court, with a copy to the undersigned, within fourteen (14) days of service of this Report. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(a), 72(b). Failure to file objections within fourteen (14) days will preclude further appellate review. Thomas v. Arn, 474 U.S. 140, 145 (1985); IUE AFL-CIO Pension Fund v. Herrmann, 9 F.3d 1049, 1054 (2d Cir. 1993); Frank v. Johnson, 968 F.2d 298, 299-300 (2d Cir. 1992).

#### **SO ORDERED:**

Dated: Central Islip, New York  
July 28, 2010

/s/ E. Thomas Boyle  
E. THOMAS BOYLE  
United States Magistrate Judge